

1 **PROGRAMMATIC AGREEMENT AMONG**
2 **THE FEDERAL HIGHWAY ADMINISTRATION,**
3 **THE U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,**
4 **THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,**
5 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND**
6 **THE GEORIGA DEPARTMENT OF TRANSPORTATION**
7 **REGARDING THE TRANSPORTATION PROGRAM IN GEORGIA**
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9
10 **WHEREAS**, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101
11 et seq., implements the Federal-aid Highway Program (Program) in the State of Georgia by
12 funding and approving state and locally sponsored transportation projects that are administered
13 by the Georgia Department of Transportation (GDOT) and
14

15 **WHEREAS**, for federally funded projects, the Georgia FHWA Division Administrator is the
16 "Agency Official" responsible for ensuring that the Program in the State of Georgia (sometimes
17 herein "State") complies with Section 106 of the National Historic Preservation Act (NHPA) (54
18 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR 800, as
19 amended (August 5, 2004); and

20 **WHEREAS**, GDOT administers Federal-aid projects throughout the State of Georgia as
21 authorized by 23 U.S.C. 302 and Title 32 of the Official Code of Georgia Annotated; and

22 **WHEREAS**, the U.S. Army Corps of Engineers, Savannah District (Corps) administers a
23 Department of the Army permit program under the authority of the Rivers and Harbors Act of 1899,
24 Section 10 (33 U.S.C. 401 and 403), and the Clean Water Act of 1973, Section 404 (33 U.S.C. 1344),
25 hereafter referred to as Permits, to which highway projects in Georgia may be subject; and
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27 **WHEREAS**, for State funded projects, the Corps District Commander is the "Agency Official"
28 responsible for ensuring that the Permits in the State of Georgia comply with Section 106 of the
29 NHPA (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR 800,
30 as amended (August 5, 2004); and

31 **WHEREAS**, the responsibilities of the Georgia State Historic Preservation Officer (SHPO) under
32 Section 106 of the NHPA and 36 CFR 800 are to advise, assist, review, and consult with Federal
33 Agencies as they carry out their historic preservation responsibilities and to respond to Federal
34 Agencies' requests within a specified period of time; and

35 **WHEREAS**, FHWA has determined that construction, maintenance, and emergency relief
36 projects as part of the Program, and related FHWA approvals for changes in access to the
37 Interstate System in Georgia are undertakings pursuant to Section 106 of the NHPA and may have
38 an effect upon properties included in, or eligible for inclusion in, the National Register of Historic
39 Places (NRHP), hereafter referred to as Historic Properties, and has consulted with the SHPO and
40 the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the
41 regulations implementing Section 106 of the NHPA; and

42 **WHEREAS**, the Corps has determined that projects authorized by Department of the Army
43 Permits are undertakings pursuant to Section 106 and may have an effect on Historic Properties
44 and the Corps will utilize this Programmatic Agreement (Agreement) for GDOT projects subject to
45 its Permits; and

WHEREAS, GDOT, in consultation with FHWA, the Corps, ACHP, and the SHPO, will develop a Cultural Resources Manual to accompany this Agreement containing guidance on how to implement the Agreement; and

WHEREAS, FHWA and the Corps, collectively referred to as Federal Agencies or separately each as Lead Federal Agency as further defined below, recognize that they have a unique legal relationship with Federally-recognized Indian tribes (Tribes) as set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with Tribes must, therefore, recognize the government-to-government relationship between the Federal government and Tribes; and

WHEREAS, FHWA has consulted with Tribes with ancestral lands in Georgia about this Agreement, has requested their comments, and has taken any comments received into account (see the Cultural Resources Manual for list of Tribes); and

WHEREAS, any project involving tribal lands as defined in 36 CFR 800.16(x), or any project that may affect a property identified by a Tribe as possessing traditional religious and cultural significance, shall not be governed by this Agreement, but shall be reviewed by the FHWA/Corps in accordance with 36 CFR 800; and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective Program alternative for taking into account the effects of the Program on Historic Properties in Georgia and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, FHWA has notified the public, Federal and State agencies, and Certified Local Governments (defined in 54 U.S.C.A. § 300302) about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, GDOT has participated in the consultation and has been invited to be a signatory to this Agreement; and

WHEREAS, this Agreement shall supersede memoranda of understanding and letter agreements among the FHWA, SHPO, and GDOT dating between 1986 and 2015 (see Cultural Resources Manual for list); and

NOW, THEREFORE, FHWA, the Corps, the SHPO, the ACHP, and GDOT (hereinafter collectively referred to as parties, signatories or signatory parties and individually as party, signatory, or signatory party) agree that federal and State funded projects in Georgia shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program and/or Permits on Historic Properties in Georgia and that these stipulations shall govern compliance with the Program and/or Permits with Section 106 of the NHPA until this Agreement expires or is terminated and do hereby agree as follows:

To aid the signatories of this Agreement, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Professional Qualifications Standards
- III. Responsibilities
- IV. Consultation with Tribes
- V. Participation of Other Consulting Parties and the Public

- VI. Project Review
- VII. Emergency Situations
- VIII. Post-Review Discoveries
- IX. Identification and Treatment of Human Remains
- X. Monitoring and Reporting
- XI. Dispute Resolution
- XII. Amendment
- XIII. Termination
- XIV. Confidentiality
- XV. Duration of Agreement

STIPULATIONS

I. APPLICABILITY AND SCOPE

- A. This Agreement supersedes and replaces in its entirety the Agreement among FHWA, SHPO, and GDOT regarding FHWA's Emergency Relief Program dated March 8, 2012.
- B. This Agreement sets forth the process by which the FHWA and Corps, with the assistance of GDOT, will meet its responsibilities pursuant to Section 106 of the NHPA (54 U.S.C. § 306108).
- C. This Agreement applies to all highway projects subject to FHWA and Corps review under 23 CFR 771.115, 23 CFR 771.117, 33 CFR 320, and 33 CFR 330 (see Article VI for details regarding the extent of delegated reviews).
- D. The FHWA is the Lead Federal Agency for Program undertakings and FHWA approved changes in access to the Interstate System in Georgia that require Permits pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act of 1973 in accordance with 36 CFR 800.2(a)(2) (references to Lead Agency in this context refer to FHWA).
- E. The Corps is the Lead Federal Agency for State funded highway undertakings, that require Permits pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act of 1973 in accordance with 36 CFR 800.2(a)(2) (references to Lead Federal Agency in this context refer to the Corps).
- F. The objective of this Agreement is to make more efficient the methods by which FHWA, the Corps, and GDOT review individual undertakings processed under Section 106 that may affect Historic Properties and to establish the process by which FHWA and the Corps (who retain ultimate Section 106 responsibility) carry out their Section 106 responsibilities.
- G. Through this Agreement, FHWA and the Corps authorize GDOT to initiate on their behalf and, in many cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.
- H. The FHWA and Corps retain the responsibility to consult with Tribes as required under 36 CFR 800, as amended. GDOT may assist FHWA and the Corps if individual Tribes agree to alternate procedures.
- I. FHWA and the Corps recognize that Tribes may have sites and land of religious and cultural significance within the State of Georgia, and in meeting its Federal trust responsibility

pursuant to 36 CFR 800.2 (c)(2)(ii), FHWA and the Corps have invited the Tribes to enter (consult) on this Agreement that specifies how FHWA, the Corps, and the Tribes will carry out Section 106 responsibilities, including confidentiality of information.

- J. Cooperating Federal Agencies as defined in 40 CFR 1508.5 who recognize FHWA as the Lead Federal Agency for federally-assisted projects, and the Corps as the Lead Federal Agency for State funded projects, may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA, the Corps, and GDOT follow the requirements of this Agreement and the Cooperating Federal Agency's undertaking does not have the potential to cause effects to Historic Properties beyond those considered by FHWA, the Corps, and GDOT.

II. PROFESSIONAL QUALIFICATIONS STANDARDS

Actions prescribed by this Agreement that involve the identification, evaluation, recording, treatment, monitoring, or disposition of Historic Properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's (SOI) Professional Qualifications Standards (published in 48 FR 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA, the Corps, or GDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

III. RESPONSIBILITIES

The following section identifies the responsibilities of the Federal Agencies, and of GDOT in complying with the terms of this Agreement.

A. Lead Federal Agency Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), the Lead Federal Agency remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by GDOT under the authority of the Lead Federal Agency. At any point in the Section 106 process, the Lead Federal Agency may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. The Lead Federal Agency retains responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). At its discretion, the Lead Federal Agency may ask GDOT to assist in consultation if the individual Tribes agree to alternate procedures.
3. Pursuant to 36 CFR 800.6(a)(1), the Lead Federal Agency is responsible for notifying the ACHP of an adverse effect determination and offering the ACHP the opportunity to participate in the consultation.
4. The Lead Federal Agency shall provide ACHP copies of any Memorandum of Agreement (MOA) developed for undertakings with adverse effects to Historic Properties.
5. The Lead Federal Agency shall be responsible for resolving disputes and objections pursuant to Stipulation XI of this Agreement.
6. The Lead Federal Agency will ensure that the steps in the Section 106 process are coordinated with Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act, in accordance with 36 CFR 800.3(b).

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195 B. GDOT Responsibilities

196 GDOT, using staff and/or consultants meeting the SOI's professional qualifications
197 standards (48 FR 44738-44739), will independently perform the work and consultation
198 described in 36 CFR 800.3 – 36 CFR 800.5 (including any succeeding revisions to the
199 regulations) on behalf of the Lead Federal Agency. Assignment of these responsibilities is
200 based on adequate and appropriate performance by GDOT as evaluated through
201 monitoring by the Federal Agencies pursuant to Stipulation X of this Agreement. These
202 responsibilities include carrying out the following requirements:

- 203
204 1. 36 CFR 800.3(a) Determine whether the undertaking is a type of activity that has the
205 potential to cause effects on Historic Properties.
206 2. 36 CFR 800.3(e) Solicit public comment and involvement.
207 3. 36 CFR 800.3 Identify additional consulting parties who should be invited to participate
208 in the undertakings covered by this Agreement.
209 4. 36 CFR 800.4(a) and (b) Determine and document, in consultation with the SHPO, the
210 scope of identification efforts and level of effort, including the undertaking's area of
211 potential effect (APE).
212 5. 36 CFR 800.4 In consultation with the SHPO, identify properties within the APE included
213 in or eligible for listing in the NRHP.
214 6. 36 CFR 800.5(a)(1) In consultation with SHPO, determine whether Historic Properties
215 may be affected by the undertaking by applying the criteria of adverse effect.
216 7. 36 CFR 800.6 In consultation with the Lead Federal Agency, the SHPO, the ACHP (if it
217 has chosen to participate), and any other consulting parties address any adverse
218 effects through the development, circulation, and execution of a MOA, as
219 appropriate.
220 8. Provide the Lead Federal Agency copies of all correspondence sent out on its behalf
221 (e.g. letters to SHPO or Tribes).

222 C. GDOT, in consultation with the Federal Agencies, the ACHP, and the SHPO, will develop a
223 manual containing guidance on how to implement this Agreement, specifically, how the
224 agencies will coordinate on GDOT projects. The Cultural Resources Manual must be
225 completed and approved by the Federal Agencies prior to implementation of this
226 Agreement. A table of contents for the manual is included in the Appendix. The manual
227 will be made publicly available via GDOT's Cultural Resources website. GDOT will ensure
228 that their staff and consultants act consistently with the procedures contained therein. The
229 Cultural Resources Manual establishes the framework for the implementation of GDOT's
230 Environmental Procedures Manual (EPM), specifically, Chapter 5, Section 3 of the EPM
231 (available via GDOT's Cultural Resources Website) which outlines the survey and
232 documentation requirements for GDOT's Cultural Resources Staff and/or consultants.

233 D. GDOT's Cultural Resources Manual may be revised or amended from time to time. Any
234 changes to the Cultural Resources Manual must be agreed upon in writing by FHWA, the
235 Corps, SHPO, and GDOT and, upon approval, published on GDOT's Cultural Resources
236 website. Such changes shall not be considered an amendment subject to Stipulation XII.
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238 **IV. CONSULTATION WITH TRIBES**

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240 A. FHWA as Lead Federal Agency

- 241 1. The Lead Federal Agency shall take the lead in identifying and establishing
242 consultation with Tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36
243 CFR 800.3(c)-(f). GDOT may provide general coordination information to Tribes but the
244 Lead Federal Agency shall retain ultimate responsibility for complying with all federal
245 requirements pertaining to government-to-government consultation with Tribes.

- 246 2. GDOT, the primary recipient of Federal-aid Highway funds in the State of Georgia
247 (OCGA, Title 32) will provide assistance to FHWA in complying with Section 106 of the
248 NHPA.
- 249 3. GDOT, on behalf of FHWA, shall solicit comments from Tribes for undertakings that may
250 affect properties of traditional religious and cultural significance to the Tribes and will
251 consider these Tribal governments as consulting parties for these undertakings. FHWA
252 shall retain the ultimate responsibility for complying with all Federal requirements
253 pertaining to direct government-to-government consultation with the Tribes.
254 Notwithstanding any other provision of this Agreement, FHWA shall honor the request
255 of any Tribe for direct government-to-government consultation regarding an
256 undertaking covered by this Agreement.
- 257 B. Corps as Lead Federal Agency
- 258 1. The Corps shall retain the responsibility of complying with all federal statutes, Executive
259 Orders and Corps policy memos mandating government to government consultation
260 with Tribes on federally permitted projects that impact Tribal areas of interest and
261 traditional and religious cultural heritage.
- 262 2. The Corps consults with the Tribes which claim cultural affiliation in the area of interest
263 by keeping them informed of undertakings, by providing requested materials, seeking
264 Tribal opinions, and attempting to reach mutual agreements. For Corps Tribal
265 consulting operating procedures, see the *Savannah Regulatory Guidelines for*
266 *Consultation with Federally Recognized Tribes* in the Cultural Resources Manual.

268 V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

270 A. Additional Consulting Parties

- 271 1. Consulting parties shall be identified in writing by GDOT in consultation with the SHPO
272 pursuant to 36 CFR 800.3(c-f) and their participation in undertakings covered under this
273 Agreement shall be governed by 36 CFR 800.3(f)(3). Individuals and organizations with
274 a demonstrated interest in an undertaking shall be invited by GDOT in consultation with
275 the Lead Federal Agency to participate in the Section 106 process (see Cultural
276 Resources Manual for procedures). Any land-managing agency whose land may be
277 affected by an undertaking shall be invited by GDOT to participate in the Section 106
278 process. Written requests by individuals, organizations, and agencies to become
279 consulting parties will be evaluated on a case-by-case basis by GDOT and the Lead
280 Federal Agency in consultation with the SHPO.

281 B. Public Involvement

- 282 1. Public involvement in planning and implementing undertakings covered by this
283 Agreement shall be governed by the Lead Federal Agency and GDOT's Public
284 Involvement Plan (Plan) for NEPA Projects and GDOT's environmental compliance
285 procedures (Plan available on GDOT's Cultural Resources website). The Public
286 Involvement Plan provides guidance for identifying, informing, and involving the public.
287 GDOT Cultural Resources Staff and consultants also follow a protocol for inviting
288 potential consulting parties when initiating Section 106 (see the Cultural Resources
289 Manual). The Lead Federal Agency's regulations regarding early coordination, public
290 involvement, and project development will be followed. FHWA's regulations
291 concerning public involvement can be found at 23 CFR 771.111. The Corps' regulations
292 concerning Public Notices and Public Hearings can be found at Appendix B of 33 CFR
293 Part 325 and at 33 CFR Part 327. Public involvement and the release of information
294 hereunder shall be consistent with 36 CFR 800.2(d), 800.3(e), and 800.11(c)(1 and 3).
- 295 2. The GDOT shall seek and consider the views of the public in a manner that reflects the
296 nature and complexity of the undertaking and its effects on Historic Properties, in
297 keeping with the intent of 36 CFR 800, as amended.

3. For those actions that do not routinely require public review and comment (e.g., Stipulation VI A below), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of Historic Properties, and the undertaking's potential impacts on them.
4. The GDOT shall make the Lead Federal Agency and SHPO aware of any and all public interest and/or controversy as it relates to the Historic Properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VI. PROJECT REVIEW

GDOT's SOI qualified Cultural Resources Staff and consultants will implement the following review and consultation process for federally funded projects and State funded projects with a Permit:

A. No Potential to Cause Effects

Certain GDOT maintenance activities and minor highway projects may constitute an undertaking, as defined in 36 CFR 800.16(y) but do not have the potential to affect Historic Properties included in or considered eligible for the NRHP (see Section 5.2 of the Cultural Resources Manual for complete list).

1. Each project will be reviewed for applicability per 36 CFR 800.16(y) by GDOT Cultural Resources Staff.
2. Each project fitting the activities described in Section 5.2 of the Cultural Resources Manual will be documented by GDOT Cultural Resources Staff and/or consultants with an internal GDOT memo (see Appendix B of the Cultural Resources Manual for template) and itemized as part of the Annual Report defined in Stipulation X.

B. No Historic Properties Affected

1. For those undertakings in which there are a) no previously recorded properties within the APE and b) no newly identified Historic Properties within the APE, GDOT's Cultural Resources Staff and/or consultants will issue a finding of "no historic properties affected" in a No Historic Properties Affected Document and/or an Archaeology Short Report or In House Survey Report as appropriate (See Section 5.1 of the Cultural Resources Manual for details).
2. If there are potential Historic Properties identified within the APE, GDOT's Cultural Resources Staff and/or consultants will apply the NRHP Evaluation Criteria per 36 CFR Part 63 in coordination with the SHPO and other consulting parties, as appropriate, to assess the need for any additional investigation and determine NRHP eligibility in accordance with 36 CFR 800.4 and 36 CFR 60.4. For those properties determined in consultation with SHPO as ineligible for the NRHP, GDOT will submit a No Historic Properties Affected Document for historic resources and/or a final draft Archaeology Report to conclude Section 106. For those properties determined in consultation with SHPO as eligible for the NRHP, GDOT will proceed with Part C of this stipulation and D as applicable.

C. No Adverse Effect

1. For those undertakings where Historic Properties may be affected, GDOT's Cultural Resources Staff and/or consultants will apply the criteria of adverse effect in consultation with the SHPO, Tribes, and other consulting parties, as appropriate, in accordance with 36 CFR 800.5. If the effect of the undertaking will not be adverse, the GDOT Cultural Resources Staff and/or consultants will propose a finding of No Adverse Effect and will document their finding in an Assessment of Effects document that will include the project Need and Purpose, Description, maps, photographs of the resource in the area of proposed construction, Determinations of Eligibility (DOEs) for archaeological resources, construction plans in the area of the resource, and planning

- 350 to minimize harm.
- 351 D. Adverse Effect
- 352 1. If the GDOT Cultural Resources Staff and/or consultants determine that the
- 353 undertaking will have an adverse effect on Historic Properties, GDOT will issue a finding
- 354 of Adverse Effect and will document the finding in an Assessment of Effects document
- 355 that will include the project Need and Purpose, Description, maps, photographs of the
- 356 resource in the area of proposed construction, DOEs for archaeological resources,
- 357 construction plans in the area of the resource, avoidance alternatives, planning to
- 358 minimize harm, and proposed mitigation.
- 359 2. GDOT Cultural Resources Staff and/or consultants will consult with the SHPO, the Lead
- 360 Federal Agency, Tribes (on federal projects), and any other consulting parties to
- 361 evaluate the Adverse Effect finding and/or discuss options that would avoid or
- 362 minimize adverse effects.
- 363 3. If the GDOT Cultural Resources Staff and/or consultants determine that an undertaking
- 364 may adversely affect a National Historic Landmark, GDOT's Cultural Resources Staff
- 365 will notify the Lead Federal Agency, and the Lead Federal Agency will notify and
- 366 request the SHPO, the ACHP, and the SOI to participate in consultation to resolve any
- 367 adverse effects, as outlined in 36 CFR 800.10.
- 368 4. For all undertakings in which adverse effects to Historic Properties cannot be avoided,
- 369 GDOT's Cultural Resources Staff and/or consultants will notify the Lead Federal
- 370 Agency, and the Lead Federal Agency will notify the ACHP of the finding of adverse
- 371 effect. GDOT will continue to consult with SHPO, Tribes, and other consulting parties,
- 372 as applicable, to resolve adverse effects and conclude the Section 106 process in
- 373 accordance with 36 CFR 800.6.
- 374 E. Re-Evaluations
- 375 Because Section 106 Review begins and is carried forward very early in GDOT's Plan
- 376 Development Process so that Historic Properties can be given full consideration during the
- 377 preliminary design phase, design changes are common as plans are finalized and right-of-
- 378 way (ROW) acquisition begins. Often these design changes are minor in nature; therefore,
- 379 the following procedures provide a way to document and communicate these changes
- 380 without re-opening Section 106 consultation.
- 381 1. If, after Section 106 Review has concluded, there are changes to the design of a
- 382 project, Section 106 will not be re-opened as long as the following applies (see Cultural
- 383 Resources Manual for details):
- 384 a. The APE has not changed beyond the limits of previous survey coverage
- 385 documented in the original survey report;
- 386 b. The effects to NRHP eligible or listed resources have not changed; and
- 387 c. Less than 5 years have passed since the full project survey for historic resources
- 388 was completed and concurred with by SHPO, or ROW has been authorized.
- 389 2. The design changes will be documented in a Memorandum that will be provided to
- 390 the SHPO and Lead Federal Agency for review and files (see Cultural Resources
- 391 Manual, Appendix B for template).
- 392

393 VII. EMERGENCY SITUATIONS

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395 In the event that the State of Georgia (or a county or counties in Georgia) may experience a

396 disaster (natural or otherwise) event triggering a state of emergency, as declared by the President

397 of the United States and/or the Governor of Georgia, the guidance in the Cultural Resources

398 Manual expedites the Section 106 review for Emergency Repairs as defined in 23 CFR 668.103 for

399 federally funded projects where FHWA is the Lead Federal Agency. On State funded projects

400 where the Corps is the Lead Federal Agency, emergency procedures will be conducted in

401 accordance with 33 CFR 325.2(e)(4).

VIII. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When GDOT's identification efforts indicate that Historic Properties are likely to be discovered during implementation of an undertaking, GDOT shall include in any environmental document, contract, and specifications a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6 (see the Cultural Resources Manual for process).

B. Late Discoveries

1. If previously unidentified Historic Properties, or unanticipated effects are discovered after GDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with Specification 107.13A Protection and Restoration of Property and Landscape in the current version of GDOT's *Standard Specifications Construction of Transportation Systems* current edition and as may be amended from time to time (see the Cultural Resources Manual).
2. No further construction activities in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. GDOT will consult with the Lead Federal Agency, SHPO, and the Tribes, as appropriate to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects if it is determined that the property is eligible.
4. If neither the SHPO nor a Tribe files an objection within seventy-two (72) hours of GDOT's plan for addressing the discovery, GDOT may carry out the requirements of 36 CFR 800.13 on behalf of the Lead Federal Agency, and the ACHP does not need to be notified.

IX. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. In the event that human remains are identified prior to, during, or after project construction, GDOT will develop a treatment plan in consultation with the Lead Federal Agency, the SHPO, the Office of the State Archaeologist, and other consulting parties, as applicable (see the Cultural Resources Manual for process). If it is determined that the human remains, including funerary objects, are associated with an American Indian or Native American occupation (as defined in 25 U.S.C. 32 § 3001(9)), the Lead Federal Agency and GDOT, at the discretion of the Lead Federal Agency, will consult with the Tribes prior to the development or execution of a treatment plan.
- B. All work conducted on human remains and abandoned cemeteries will comply with applicable State and Federal laws (36 CFR 800.13; 43 CFR Part 10, Subpart B; Official Code of Georgia Annotated (OCGA) § 36-72; OCGA § 31-21-6).
- C. Discoveries of unmarked graves, burials, human remains, or items of cultural patrimony on Federal lands shall be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001-3013, 18 U.S.C. § 1170) and the Archaeological Resources Protection Act of 1979 (ARPA)(16 U.S.C. §470aa – 470mm).

X. MONITORING AND REPORTING

- A. The Federal Agencies and GDOT Cultural Resources Staff will arrange for an annual meeting with SHPO and the ACHP to evaluate the Agreement, suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection

- activities carried out under the Agreement. This evaluation meeting will take place annually within two (2) months of the anniversary of the effective date of the Agreement. The ACHP's participation in these meetings is optional, at the discretion of the ACHP.
- B. If a party of the Agreement concludes that performance under the Agreement is less than satisfactory, the parties shall consult at any time to improve performance and meet again within six (6) months to evaluate improvements.
 - C. One month prior to the scheduled annual meeting, GDOT Cultural Resources Staff shall submit to SHPO, the ACHP, and the Lead Federal Agencies an Annual Report of projects reviewed by GDOT Cultural Resources Staff in accordance with Stipulation VI over the last calendar year from the effective date of the Agreement. Based upon a review of this list of projects, GDOT Cultural Resources Staff will make recommendations in the report for improving the implementation of the Agreement. The report will serve as the basis of the annual review meeting.
 - D. If upon review of the list and recommendations, the parties of the Agreement agree via email that an in-person meeting is not necessary, the parties of the Agreement may either meet via conference call or agree a meeting is not required for a particular year.

XI. DISPUTE RESOLUTION

- A. Should any signatory party object in writing to the Lead Federal Agency regarding the manner in which the terms of this Agreement are carried out, the Lead Federal Agency will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. The Lead Federal Agency will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The Lead Federal Agency shall establish a reasonable time frame for such consultations.
- B. Should any signatory party object to a Lead Federal Agency or GDOT determination of eligibility, the Lead Federal Agency will submit the determination to the Keeper of the NRHP for resolution.
- C. If the objection is resolved through consultation, the Lead Federal Agency may authorize the disputed action to proceed in accordance with the terms of such resolution.
- D. If after initiating such consultation, the Lead Federal Agency determines that the objection cannot be resolved through consultation, the Lead Federal Agency shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including the Lead Federal Agency's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - a. Advise the Lead Federal Agency that ACHP concurs with the Lead Federal Agency's proposed response to the objection, whereupon the Lead Federal Agency will respond to the objection accordingly; or
 - b. Provide the Lead Federal Agency with recommendations, which the Lead Federal Agency shall take into account in reaching a final decision regarding its response to the objection; or
 - c. Notify the Lead Federal Agency that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, the Lead Federal Agency shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(-)(4).
- E. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the Lead Federal Agency may assume ACHP's concurrence in its proposed response to the objection.
- F. The Lead Federal Agency shall take into account any ACHP recommendation or

- comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection.
- G. The Lead Federal Agency shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
- H. The Lead Federal Agency may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
- I. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify the Lead Federal Agency. The Lead Federal Agency shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to the Lead Federal Agency. The Lead Federal Agency shall establish a reasonable time frame for this comment period. The Lead Federal Agency shall consider the objection, and in reaching its decision, the Lead Federal Agency will take all comments from the other parties into account. Within 15 days following closure of the comment period, the Lead Federal Agency will render a decision regarding the objection and respond to the objecting party. The Lead Federal Agency will promptly notify the other parties of its decision in writing, including a copy of the response of the objecting party. The Lead Federal Agency's decision regarding resolution of the objection will be final. Following issuance of its final decision, the Lead Federal Agency may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.
- J. The Lead Federal Agency's responsibility to carry out all actions under this Agreement that are not the subject(s) of the objection shall remain unchanged.

XII. AMENDMENT

Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties. The amended Agreement will be filed with the ACHP.

XIII. TERMINATION

- A. Any signatory party may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XII, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
- D. Should this Agreement be terminated, the Lead Federal Agency would carry out the requirement of 36 CFR 800 for individual undertakings.
- E. Beginning with the date of termination, the Lead Federal Agency shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-6.

XIV. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about Historic Properties, potential Historic Properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows the Lead Federal Agency to withhold from disclosure to the public, information about the location, character, or ownership of a historic property if GDOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic property; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

XV. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect (the date the last party signs), unless it is terminated prior to that time. Ninety (90) days prior to the conclusion of the five-year period, GDOT will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will automatically be extended for an additional five (5) years. If any party objects to extending the Agreement, or proposes amendments, GDOT will consult with the parties to consider amendments or other actions to avoid termination.

Execution and implementation of this Agreement evidences that the signatory Federal Agencies have delegated certain Section 106 responsibilities to GDOT, and have afforded ACHP a reasonable opportunity to comment on the undertakings identified in this Agreement, and that the signatory Federal Agencies have taken into account the effects of the Program and Corps permit program and their individual undertakings on Historic Properties, and that the signatory Federal Agencies have complied with Section 106 of the NHPA and 36 CFR 800 for the program and its individual undertakings.

XVI. INCORPORATION OF WHEREAS CLAUSES

The above "Whereas" clauses are hereby incorporated by reference as though fully set forth herein.

Signatories:

Federal Highway Administration

By: _____ Date: _____
Moises Marrero, Division Administrator

U.S. Army Corps of Engineers, Savannah District

By: _____ Date: _____
Marvin L. Griffin, P.E., COL, EN Commanding

State Historic Preservation Officer

By: _____ Date: _____
David Crass, Division Director, Deputy SHPO

Advisory Council on Historic Preservation

By: _____ Date: _____
John M. Fowler, Executive Director

Georgia Department of Transportation

By: _____ Date: _____
Russell R. McMurry, P.E., Commissioner

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